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United States
Circuit Court of Appeals
For the Ninth Circuit.

1477
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THE CITY OF LOS ANGELES, a Municipal Corporation, GEORGE E. CRYER, Mayor of the City of Los Angeles, and ROBERT LEE HEATH, Chief of Police of the City of Los Angeles,

Appellants,

vs.

UNITED DREDGING COMPANY, a corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.



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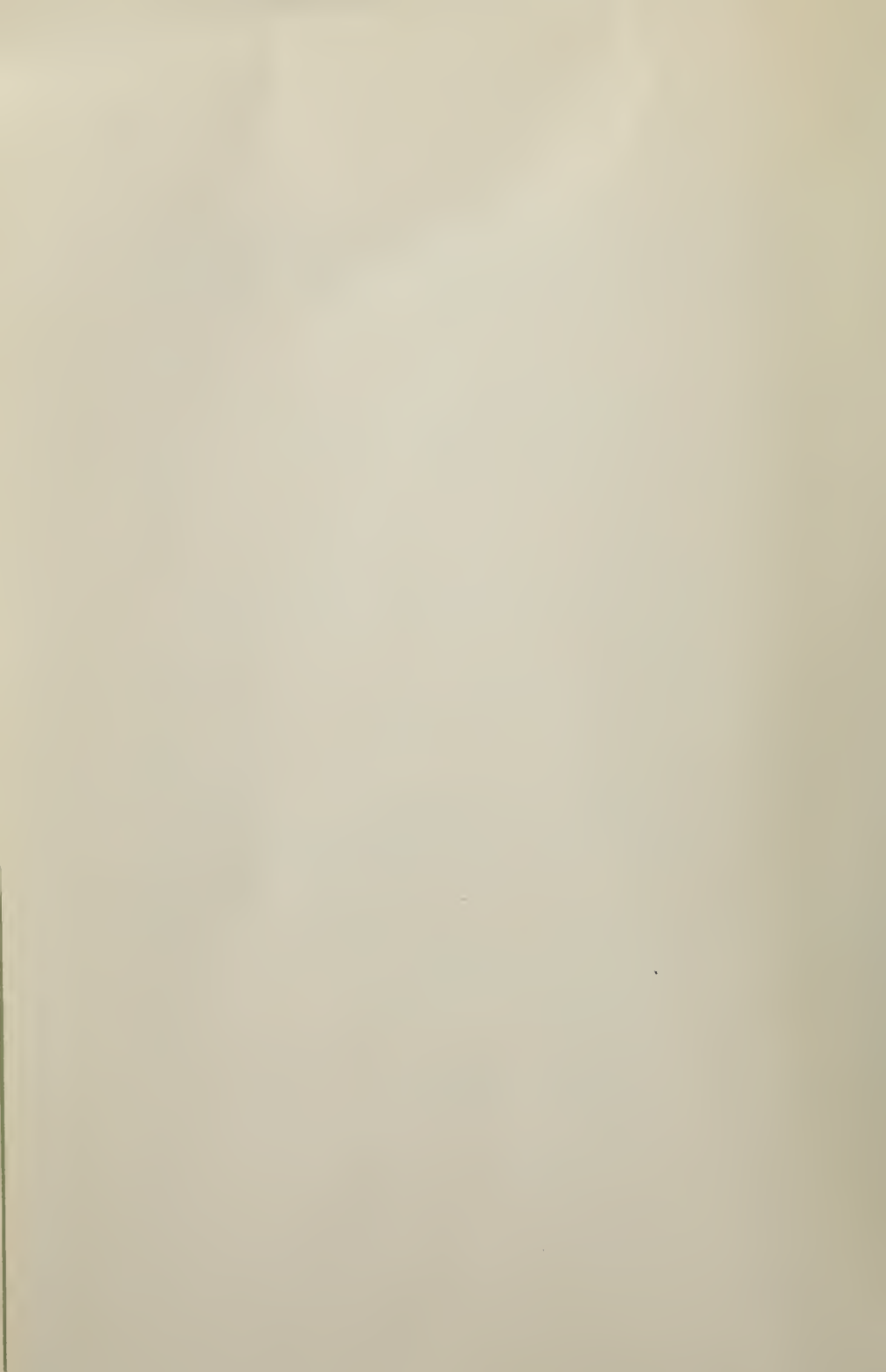
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellants:

JESS E. STEPHENS, Esq., City Attorney;
LUCIUS P. GREEN, Esq., Assistant City At-
torney, Byrne Building, Los Angeles, Cali-
fornia.

For Appellee:

OVERTON, LYMAN & PLUMB, Esqs.; L. K.
VERMILLE, Pacific Finance Building, Los
Angeles, California.

United States of America, ss.

To United Dredging Company a corporation Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 1st day of March, A. D. 1926, pursuant to an order allowing an appeal, of record in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action, wherein you are plaintiff and appellee, and the City of Los Angeles, a municipal corporation, George E. Cryer, Mayor of the City of Los Angeles and Robert Lee Heath, Chief of Police of the City of Los Angeles, are defendants and appellants and you are ordered to show cause, if any there be, why the decree rendered against the said defendants and appellants in the said order allowing appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable William P. James United States Judge for the Southern District of California, this 5th day of February, A. D. 1926, and of the Independence of the United States, the one hundred and Fiftieth

Wm P. James

U. S. District Judge for the Southern District
of California.

[Endorsed]: Receipt of a copy of the within Citation is hereby admitted this 5th day of February, 1926 Overton, Lyman & Plumb, attorneys for plaintiff and appellee Filed Feb 8 1926 Chas. N. Williams, Clerk By L. J. Cordes, deputy clerk

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED DREDGING COM-)
	:
PANY, a corporation,	:
	:
	Plaintiff, :
	IN EQUITY.
	:
-vs-	:
	AMENDED
	COMPLAINT
THE CITY OF LOS ANGELES,	:
a municipal corporation, GEORGE	FOR
E. CRYER, mayor of the City of :	INJUNCTION.
Los Angeles, and ROBERT LEE :	
HEATH, Chief of Police of the :	
City of Los Angeles,	:
	:
	Defendants.)

NOW COMES the plaintiff above named and complains of the defendants above named and alleges:

I.

That plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and is a citizen and resident of the State of Delaware.

That defendant, City of Los Angeles, is a municipal corporation organized and existing under and by virtue of the laws of the State of California and is a citizen and resident of the State of California.

That the defendant, George E. Cryer, is the duly qualified and acting mayor of the City of Los Angeles, State of California, and is a resident and citizen of the State of California .

That the defendant, Robert Lee Heath, is the duly qualified and acting Chief of Police of the City of Los Angeles, State of California, and is a citizen and resident of the State of California.

II.

That there is now in effect an ordinance of the City of Los Angeles, entitled "An Ordinance providing for the appointment of a Board of Mechanical Engineers, prescribing their powers and duties, and regulating the construction, operation and inspection of boilers and elevators and of gas and electric hoists and the operation of gas and gasoline road rollers and tractors", same being No. 33512 New Series as amended by Ordinance No. 38,872, 38,873, 41,463, and 47,456 (all New Series) of said City, and providing among other things as follows:—

SECTION 12. (AS AMENDED BY ORDINANCE No. 41, 463 (N. S.), APPROVED MARCH 4, 1921.) Every owner or user of any boiler or steam generating apparatus used for power or heating purposes, carrying over ten pounds of steam, shall, when the same is in use, employ a competent engineer

having an unexpired and unrevoked certificate of license from the Board of Mechanical Engineers, and it shall be unlawful for any such owner or user to employ or permit any person to operate or use the same, other than such an engineer having an unexpired or unrevoked certificate of license.

SEC. 13. It shall be unlawful for any person to use or operate any steam roller or steam generating apparatus of over five horsepower in the City of Los Angeles, unless such person has an unexpired and unrevoked certificate of license issued by the said Board as in this ordinance provided.

SEC. 22. It shall be unlawful for any person, firm or corporation to use or operate, or to cause or permit to be used or operated, any steam boiler or any steam generating apparatus, or any mangle or steam kettle or any cast iron heater, until the same shall have been inspected and tested and all inspection fees paid, and a certificate issued as in this ordinance provided, or unless the same is inspected and tested as often as is required by this ordinance.

SEC. 43. That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than five (\$5) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the city jail for a period of not more than six (6) months, or by both fine and imprisonment.

Each such person, firm or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punishable therefor as provided by this ordinance."

III.

That the plaintiff is engaged in the dredging business operating dredges together with its equipment in the navigable waters along the coast of the United States under contracts with individuals, municipal corporations and the United States Government. That among its other operations, plaintiff is at the present time engaged in dredging the harbor of Los Angeles in the San Pedro District at Los Angeles, California, under a contract with the United States Government and in connection with said dredging operations is using a seagoing barge equipped with certain steam boilers and other facilities for dredging in the navigable waters of Los Angeles Harbor. That said seagoing barge equipped with facilities for dredging is known as and called a "dredge" and hereinafter referred to as such. That in the operation of said dredge, it is necessary for plaintiff to employ certain seamen to operate certain steam boilers upon said dredge and equipment. That the defendants claim said seamen are subject to the provisions of said ordinance and at numerous and sundry times have caused said seamen so operating said steam boilers

to be arrested. That unless restrained by this Honorable Court the said defendants threaten to and will have said seamen arrested and fined or imprisoned or both fined and imprisoned. That said seamen are necessary for the operation of said dredge and the performance of said contract with the United States Government. That said dredge and its equipment is operated solely in navigable waters of the United States and are vessels within the meaning of the statutes and constitution of the United States of America. That said seamen are subject solely to the control of the Federal Government and are not in any manner subject to the jurisdiction of the defendant, City of Los Angeles.

That the Federal Congress have by act duly passed governed the requirements of seamen.

IV.

That certain steam boilers on board said dredge and equipment operated as aforesaid are necessary for the operation of said dredge and equipment and the performance of said contract. That defendants claim said steam boilers on board said dredge and equipment are subject to the provisions of said ordinance.

That unless restrained by this Honorable Court, the said defendants threaten to and will have plaintiffs' officers arrested and imprisoned or will cause plaintiff to be fined.

V.

That unless defendants are enjoined and restrained from enforcing said ordinance as aforesaid, plaintiff will be compelled either to immediately abandon dredging operations in said Los Angeles Harbor, all to the great and irreparable injury of plaintiff or in order to protect its rights, to engage in dredging said Los Angeles Harbor, plaintiff will be compelled to submit to a multiplicity of suits and prosecutions.

VI.

That the value of the matter in dispute and the value to plaintiff of its rights to engage in dredging operations under contract with the United States Government for the dredging of Los Angeles Harbor is uncertain and impossible of exact determination, but is greatly in excess of Three Thousand Dollars (\$3,000.00).

That the arrest of the seamen of plaintiff as alleged will greatly damage plaintiff in an amount which it is unable to state but greatly in excess of Three Thousand Dollars (\$3,000.00).

VII.

That the action involves a Federal question and comes under the Federal constitution in that it violates the plaintiff's right under the 14th amendment of the Federal constitution and is a taking of plaintiff's property without due process of law and violates the provision of the Federal constitution which gives the Federal Congress control over instruments of commerce between various states and foreign coun-

tries, and is within the admiralty jurisdiction of the United States Government.

WHEREFORE, plaintiff prays;

1—That an order to show cause issue out of this Honorable Court directing and requiring defendants and each of them to appear before this Honorable Court at an early date and show cause why a preliminary injunction should not issue restraining defendants and each of them and all persons acting under their control from enforcing or attempting to enforce said ordinance or any provision thereof against plaintiff or its seamen, while engaged in dredging navigable waters of Los Angeles Harbor until the trial of this cause; and that pending the final hearing and determination of this cause the court grant a preliminary injunction enjoining and prohibiting defendants from doing all or any of the acts above set forth and that pending a hearing of the application for such preliminary injunction this court grant a restraining order enjoining and restraining the defendants and each of them from doing any of said acts.

2—That upon the trial of this action a permanent injunction be issued forever enjoining the defendants and each of them from doing any of the acts mentioned in the last paragraph.

3—For such other and further relief as may be meet and agreeable to equity.

Overton, Lyman & Plumb

Attorneys for plaintiff.

[Title of Court and Cause.]

ANSWER TO AMENDED COMPLAINT FOR
INJUNCTION.

Come now the defendants above named, and answering the Amended Complaint herein, admit, deny and allege as follows:

I.

Answering Paragraph III, upon information and belief, deny that the plaintiff is engaged in the dredging business, operating dredges, together with its equipment, in the, or any, navigable waters along the coast of the United States under contract with individuals, municipal corporations or the United States government; or that, among its other, or any, operations, plaintiff is at the present time engaged in dredging the Harbor of Los Angeles in the San Pedro district at Los Angeles, California, under a, or any, contract with the United States government. Deny that in connection with said, or any, dredging operations, plaintiff is using a sea going barge equipped with certain steam boilers, or other, or any, facilities for dredging in the navigable waters of the Los Angeles Harbor. Deny that said sea going barge, equipped with facilities for dredging, is known as, or called a "dredge". Deny that in the operation of said, or any, dredge, it is necessary for plaintiff to employ certain, or any, seamen, to operate certain, or any, steam barge upon said dredge or equipment. Deny that these defendants claim said, or any, seamen are sub-

ject to the, or any, provisions of said ordinance, or at numerous or any or sundry times have caused said, or any, seamen, so operating said, or any, steam barge, to be arrested. Deny that, unless restrained by this Honorable Court, these defendants threaten to, or will have said, or any, seamen arrested or fined or imprisoned, or both fined and imprisoned, or that said, or any seamen are necessary for the operation of said dredge for the performance of said contract with the United States government. Deny that said dredge, or its equipment, is a vessel within the meaning of the, or any, statutes or Constitution of the United States of America. Deny that said, or any seamen, are subject solely to the control of the federal government, or that they are not in any manner subject to the jurisdiction of the defendant, City of Los Angeles.

II.

Answering Paragraph V, upon information and belief, deny that unless defendants are enjoined or restrained from enforcing said ordinance plaintiff will be compelled, either to immediately abandon dredging operations in said Los Angeles Harbor, to the, or any, great or irreparable injury of plaintiff, or in order to protect its rights to engage in dredging said Los Angeles Harbor, plaintiff will be compelled to submit to a multiplicity of suits or prosecutions.

III.

Answering Paragraph VI, deny that the value of the matter, or any matter, in dispute, or the value to

plaintiff of its rights to engage in dredging operations under contract with the United States government for the dredging of Los Angeles Harbor is uncertain, or impossible of exact determination, or is greatly in excess of Three Thousand Dollars (\$3,000.00) or any other sum, and allege that the operations of plaintiff in relation to the dredging of said harbor are not differently or otherwise affected under said ordinance than are the business operations of other persons, firms or corporations subject to the regulations thereof. Deny that the arrest of the, or any, seamen of plaintiff will greatly, or otherwise damage plaintiff in an, or any, amount, or in excess of Three Thousand Dollars (\$3000.00), or any other sum.

IV.

Answering Paragraph VII, deny that the action involves a federal question, or comes under the federal constitution in that it violates the plaintiff's right under the Fourteenth Amendment of the Federal Constitution, or is a taking of plaintiff's property without due process of law, or violates the, or any, provision of the Federal Constitution which gives the federal Congress control over instruments of commerce between various states or foreign countries, or is within the admiralty jurisdiction of the United States government.

WHEREFORE, Defendants pray that plaintiff take nothing by this action and for such other and further

relief as may seem to the Court meet and proper, and for their costs herein expended.

Jess E Stephens

City Attorney.

Lucius P. Green

Assistant City Attorney.

Attorneys for the Defendants herein.

STATE OF CALIFORNIA :
: ss.
COUNTY OF LOS ANGELES:

ROBT. DOMINGUEZ, being first duly sworn, deposes and says: That he is an officer of the City of Los Angeles, one of the defendants in the above entitled action, to-wit, City Clerk of said City, and as such officer he makes the following verification:

That he has read the foregoing Answer to Amended Complaint for Injunction, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters, he believes it to be true.

Robt Dominguez

Subscribed and sworn to before me this 23rd day of March, 1925.

[Seal]

Herbert S Payne.

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Received copy of the within this 23rd day of March 1925 Overton, Lyman & Plumb Attorney for plaintiff Filed Mar 24 1925 Chas. N. Williams, Clerk By L. J. Cordes, Deputy

[Title of Court and Cause.]

FINAL DECREE FOR INJUNCTION

This cause came on for final hearing before Honorable Wm. P. James, Judge of the above entitled court, on the 8th day of December, 1925, upon the pleadings, and proofs of the respective parties comprising the testimony of numerous witnesses, as well as exhibits, and having been argued by counsel and submitted on briefs and the court being fully advised in the premises; now, therefore, upon consideration thereof,

IT IS ORDERED, ADJUDGED AND DECREED that the defendants, City of Los Angeles, a municipal corporation, George E. Cryer, Mayor of the City of Los Angeles, Robert Lee Heath, Chief of Police of the City of Los Angeles, and each of them and all persons acting under their control are hereby perpetually enjoined and restrained from enforcing or attempting to enforce that certain ordinance of the City of Los Angeles known as No. 33512 New Series, as amended by Nos. 38872, 38873, 41463 and 47457 New Series, or any provision thereof, requiring the inspection of steam boilers or steam generating apparatus or the licensing of operators of steam boilers or steam generating apparatus on plaintiff's dredge while engaged in dredging in the navigable waters within the city limits of Los Angeles.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff do recover from de-

defendants its taxable costs of suit herein amounting to the sum of \$46/00 and that execution issue therefor.

Dated, Los Angeles, California, January 19, 1926.

Wm P James

District Judge.

Approved as to form as provided in Rule 44.

Jess E. Stephens City Attorney

Lucius P. Green Assistant.

Attorneys for Defendants.

Decree entered and recorded Jan. 19th—1926.

CHAS. N. WILLIAMS, Clerk.

By Murray E. Wire, Deputy Clerk

[Endorsed]: Filed Jan 19 1926 Chas. N. Williams, Clerk By Murray E. Wire Deputy Clerk

[Title of Court and Cause.]

STIPULATION.

CONSOLIDATING CAUSE ON APPEAL WITH
THAT OF FRED C. FRANKS, et al., VS CITY
OF LOS ANGELES, et al., NO. H-120-J.

WHEREAS, the facts and matters at issue in the above entitled case are identical with those in the case of Fred C. Franks, et al., vs. City of Los Angeles, et al., No. H-120-J; and

WHEREAS, upon stipulation of the parties and the order of the court the said action of Fred C. Franks, et al., vs. City of Los Angeles, et al., No. H-120-J, was tried upon the evidence introduced in the above

entitled action and judgment therein rendered by the court upon the said evidence;

NOW, THEREFORE, for the purpose of conserving the time of the honorable United States Circuit Court of Appeals, it is hereby stipulated and agreed by and between the undersigned solicitors for the respective parties hereto that the appeal of defendants in the said action of Fred C. Franks, et al., vs. City of Los Angeles, et al., No. H-120-J, taken simultaneously herewith, shall be consolidated herewith and be presented and heard upon the transcript of record on appeal. including the statement of evidence presented on appeal herein, and that the transcript of the record and briefs on appeal of the parties hereto, shall bear the titles of both causes and shall apply to each to the same extent as if presented separately.

Dated this 26th day of March, 1926.

Overton, Lyman & Plumb

L. K. Vermille

Solicitors for Plaintiff and Appellee.

Jess E Stephens

City Attorney

and

Lucius P. Green

Asst. City Attorney

Solicitors for Defendants and Appellants.

In so far as it is proper for me to direct the consolidation of the causes for presentation to the Circuit Court of Appeals, it is ordered that the same be

(Testimony of Fred C. Franks.)

done in accordance with the foregoing stipulation.
March 20 1926

Wm P James
Dist Judge

[Endorsed]: Filed Mar 20 1926 Chas. N. Wil-
liams, Clerk By L J Cordes Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA SOUTHERN DIVI-
SION.

Hon William P. James, Judge Presiding.

UNITED DREDGING COMPANY, a corpora-
tion, Plaintiff, -vs- CITY OF LOS ANGELES, et al.,
Defendants. NO. H-121-J.

FRED C. FRANKS, et al., Plaintiffs, -vs- CITY OF
LOS ANGELES, et al., Defendants. NO. H-120-J.

—o0o—

FRED C. FRANKS,

called as a witness on behalf of plaintiff, being first
duly sworn, testified as follows:

I am in the business of dredging and reclamation
contracting. We operate dredges around San Fran-
cisco Bay on the Sacramento and San Joaquin Rivers
and in the vicinity of San Pedro and Long Beach.
We started operating dredges in San Pedro in the

(Testimony of Fred C. Franks.)

fall of 1923 under contract with the United States Government and have been there ever since. Our dredging equipment consists of clam shell dredges, hopper barges and suction dredges. At San Pedro we were operating the clam shell dredge "Monterey" and the suction dredge "Seattle". The photograph shown me (Plaintiff's Exhibit No. 1) is of the dredge "Seattle"; the dredge "Seattle" consists of dredging machinery made on a hull of the required depth and staunchness to be towed at sea. It was towed from Puget Sound to San Pedro, the trip occupying eight or ten days. I do not know whether this dredge had ever been to sea before. It is necessary to employ a crew of men on these dredges during their operation. We have operated the dredge "Seattle" in Los Angeles and Long Beach Harbors only. In Los Angeles Harbor we operated principally opposite Fifth Street in water ten to thirty feet in depth above high tide, for the purpose of deepening and widening the harbor. We didn't run our dredge into shallow water. The value of the dredging operations upon which we were engaged is in excess of \$3,000.00. During the operation of the dredge operating in San Pedro Harbor, some of our employees were arrested and the damage we will sustain from the arrest of these employees, if continued, would be in excess of \$3,000.00.

The dredge "Seattle" is a 20 inch suction dredger. Arrests of employees were made on both the dredger "Seattle" and the dredger "Monterey" in Los Angeles

(Testimony of Fred C. Franks.)

Harbor. The suction pipe dredge deposits material upon adjacent land through a pipe line which was the operation we were engaged in in Los Angeles Harbor. We operated our dredgers in Los Angeles Harbor for a little over a year starting in 1923, and finishing in 1924. The steam equipment on the dredge "Seattle" consists of two Scotch marine boilers. We bought the "Seattle" at Seattle, Washington, in July or August, 1923, for the purpose of operating her in Los Angeles Harbor. She is about twelve years old. Her boilers have been inspected. Her boilers have never been inspected by the Federal Government during any time we owned her. To operate the dredge we employ a chief engineer and three assistants and three oilers and all of the engineers and assistants have Federal licenses. At the present time, the dredge "Seattle" is tied up in Long Beach Harbor.

We built the clam shell dredge "Monterey" at Pittsburg, California, on the Upper San Francisco Bay, about 1910 or 1911 and she was brought to Los Angeles October 23rd, a month or a month and a half later than the "Seattle"; and we have operated her off and on in Los Angeles Harbor ever since we brought her down here. The "Monterey" has a Scotch marine boiler and a donkey boiler. The boilers have never been inspected by the Federal Government at any time.

(Testimony of R. N. Thorsheim.)

R. N. THORSHEIM

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

I am Captain of the suction dredger "Seattle" and have been so ever since the latter part of 1912 when it was built. I am familiar with the "Seattle" and her construction and equipment. She is constructed of 12 by 12 timbers surfaced and 12 by 12 surfaced running fore and aft, with 4 inch planks on the outside of that. The picture you show me (Plaintiff's Exhibit No. 1) is of the dredge "Seattle". I have taken trips to sea with the "Seattle" three different times; first from Seattle to Marshfield, Oregon and from Marshfield, Oregon back to Seattle; from Seattle to Aberdeen, Washington, and from Aberdeen, Washington back to Seattle and from Seattle to San Pedro, California. I have done dredging at Coos Bay, Oregon, and the trips that I have testified to were made on the high seas. On the trip from Coos Bay to Seattle, upon leaving Coos Bay, or Marshfield, it was blowing a northwest gale, but we managed to get over the bar on the afternoon of the 9th of November, and it was blowing a stiff breeze that afternoon and also the following night and the next day. The second night it got very rough, a real rough sea, and a little before midnight our hawser broke. The hawser was a 2 inch steel cable. We had northeast gales with hail storms and we were adrift all night until the next morning about eight o'clock because the

(Testimony of R. N. Thorsheim.)

tug could not get close enough to take us up. We happened to be about thirty miles off shore when this happened. The "Seattle" weathered and rode the sea well, without the least bit of damage and no leaks, notwithstanding, the breakers continually washed the decks. We had no trouble with her in the least. She was just as sound when we got back to Seattle as the day we left Seattle on the voyage. I was on the dredge on a trip from Seattle down to San Pedro and had no trouble with her at sea. I was on the "Seattle" when several of my men were arrested; I was one of them, one was an assistant engineer and one was a fireman. (It was here stipulated between counsel that the arrests testified to were made by officers of the City of Los Angeles acting under and by authority of Ordinance No. 33,512 and amendatory ordinances Nos. 38,873, 41,463 and 47,457, which ordinances were introduced in evidence as Plaintiff's Exhibit No. 2).

These dredges are planked with 4 inch planks on the bottom outside of the timber that runs fore and aft making it practically 27 inches or 26½ inches, or whatever it may be, that the timbers are surfaced and there are two 12 by 12's with a 4 inch plank at the outside from 7 feet up and the last 5 feet, they are cut out. The decks are 4 inches of split timber and the superstructure house or cabin is of course built as an ordinary or a heavy house.

We moved the dredger "Seattle" in the month of November, 1914, the latter part of 1914; she was

(Testimony of Charles O. Lendelof.)

towed by the tug "Goliath" and she was also towed when she was brought to Los Angeles Harbor from Seattle. On the trip from Seattle to Los Angeles Harbor we left Seattle on the 29th of August, 1923.

I would call the hull of the dredger a barge float; it has a 12 foot draft and the depth below water line is about 7 feet. She is decked over with the exception of the engine and boiler rooms, these being located inside of the hull, as is also practically all of the suction machinery.

CHARLES O. LENDELOF,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Charles O. Lendelof. I am in the business of dredging with the Franks Construction Company, in which business I have been engaged for the last twenty-five years. I am familiar with the dredge "Seattle" and I know generally how she is constructed. The bottom of the dredge is approximately around 27 inches, three courses of timbers; the sides are 12 by 12 running solid up to above the water line and every intermediate stanchion is left out for ventilation space and the outside is 6 inch planking and the decks 4 inch. The photograph you show me is of the dredge "Seattle". (Plaintiff's Exhibit No. 1).

I am a sort of a manager for the Franks Construction Company. I know that the dredge "Seattle" was taken to sea and I remember when she was taken from Seattle to Coos Bay and back again down here.

(Testimony of Andrew Young.)

Approximately the dimensions of the dredge "Seattle" are 151 feet over all, 40 feet beam, about 12 feet deep. She draws about 7 feet of water the way she stands today.

ANDREW YOUNG,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Andrew Young. I am an engineer and marine surveyor. I have been a marine surveyor since 1912. My duties as a marine surveyor are to make surveys on the different vessels for the purpose of insurance prior to their going to sea, I am familiar with the dredges "Seattle" and "San Francisco." I have been on board of them and looked them over. They are heavily constructed for sea going. The dredges are constructed with heavy timber and braces fore and aft and bulk headed. I would call the dredge "Seattle" a barge, which is able to go to sea and I would recommend insurance on her to go on the high seas.

Prior to my becoming a marine surveyor I was a marine engineer and superintending engineer for the Wilmington Transportation Company for 37 years.

I have made surveys upon barges for the purpose of insurance. There are barges in use in Los Angeles Harbor at the present time. Their principal use is carrying rock from Catalina Island to the construction work around the harbor. Some of them are capable of carrying about 1100 tons, some of them 600,

(Testimony of D. E. Hughes.)

some of them 400 and some of them 200 tons. They are from 100 to 150 feet in length and about 35 to 45 feet beam and 8 or 10 feet depth of hold. They are towed by tug boats as a rule and those that carry rock from Catalina are towed across the channel to Catalina Island and back again. There are similar barges used in carrying lumber and products of that sort running on the coast. They carry a deck load and also a load in the hull. They are not like rock barges. They are decked over with hatches and they are always towed and they go as far north as Seattle to get lumber and bring it down to Los Angeles. Other barges are used for oil. Barges are also used as dredgers, with pile drivers, some with booms on them for clam shell dredges. Aside from the dredges and leaving the dredgers out of consideration, barges in the harbor are used also to transport goods around from one place to another on tow. Harbor barges are used generally for carrying lumber and other commodities around the harbor.

These dredges are constructed on barges; they become a dredge when the machinery is installed. They are nothing more than barges with machinery installed for dredging.

D. E. HUGHES,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is D. E. Hughes. I am a civil engineer employed by the War Department. I am familiar

(Testimony of Charles F. Guthridge.)

with dredging operations around San Pedro Harbor. These dredges operate in the navigable waters of San Pedro Harbor.

CHARLES F. GUTHRIDGE,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

My name is Charles F. Guthridge. I am Vice-president of the United Dredging Company, dredging and reclamation work. We operate dredges in navigable waters of the United States. We were dredging in San Pedro Harbor during the year 1924. We were operating opposite San Pedro on the Terminal Island side in the navigable waters of the Harbor. The picture you show me is a picture of the clam shell dredge "San Francisco." (Plaintiff's Exhibit No. 3). She is one of our dredges and was one of the dredges that we were operating during August 1924. The dredge "San Francisco" is built of wood, very heavy timbers with cross keelsons, made in barge form, with machinery for clam shell dredge placed thereon. They are constructed of heavy timbers so as to make it possible for them to go to sea. The "San Francisco" has gone to sea between Los Angeles Harbor and San Francisco over five or six times during all kinds of weather. The value of our dredging operations at San Pedro is in excess of \$3,000.00 and if the arrest of our men employed on these dredges continues we will be damaged more than \$3,000.00.

(Testimony of Samuel A. Kennedy, Jr.)

I have known the "San Francisco" for about 17 years. She has operated in San Francisco Harbor. I am fairly familiar with these dredges. They can be towed between any harbors either on this Coast or on the Atlantic Coast with safety during the time of a severe storm. I think there are two boilers on the "San Francisco". These boilers have been inspected by the City of Los Angeles but to my knowledge there has been no inspection by the Federal Government.

We have towed dredges of similar construction from this Coast to Honolulu and also from here to the Atlantic Coast and vice versa around through the Panama Canal and on the Atlantic Coast on the high seas. Our dredges are enrolled in New York.

SAMUEL A. KENNEDY, JR.,

called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Samuel A. Kennedy, Jr., and my occupation is local inspector of hulls for the district of Los Angeles. I have been in that occupation since August 8, 1918, during which time I have been in the local district. I am not very familiar with the dredges operated in Los Angeles Harbor. I know there are dredges operating in Los Angeles Harbor and have seen them operating there from time to time. I have never inspected these dredges at any time in the performance of my duties, neither hulls nor boilers and I have never had any instructions to inspect these vessels by my Department. We inspect all ves-

(Testimony of Samuel A. Kennedy, Jr.)

sels propelled in whole or in part by steam, sailing vessels over 700 gross tons carrying passengers for hire, motor vessels of above 15 gross tons that carry freight or passengers for hire and sea-going barges. We inspect seagoing barges that have crew's accommodations on board and a barge is a vessel that is engaged in trade and are the ones that we inspect and according to our instructions they shall carry their crews under a deck to distinguish them from a scow. If such a barge was carrying a regular load between Catalina Island and the Harbor in tow without crew's quarters, we would not inspect it. All that we inspect is engaged in trade. It is engaged in the commercial field in carrying cargoes, a type of carrier, but regardless of whether it carries cargoes or not, or whether it travels the high seas, we do not inspect it unless it is equipped with crew's quarters. We inspect their hulls and certain equipment consisting of a life boat, anchors, life preservers and the necessary equipment for a life boat. The pamphlet you show me entitled "Department of Commerce, Steamboat Inspection Service, General Rules and Regulations prescribed by the Board of Supervisors, Ocean and Coastwise", dated April 24, 1924, contains the rules and regulations promulgated by the Board of Supervising Inspectors by which I am limited in the performance of my duties as an inspector. The custom house determines whether a vessel is required by law to be inspected and if so a certificate of inspection is issued by our service. The first that we know that a vessel

(Testimony of Joseph A. Moody.)

is to be inspected is when the application for inspection is made.

We do not inspect sailing vessels coming into port under 700 gross tons. Many sailing vessels have donkey boilers on board, but I cannot name them off hand. We do not inspect them.

JOSEPH A. MOODY,

called as a witness on behalf of defendants, being first duly sworn, testified as follows:

My name is Joseph A. Moody. I am local inspector of boilers, steam boat inspection service stationed at San Pedro. I have been there since August, 1921, and in the capacity of local inspector since September, 1923. I am not very familiar with the dredges operating in the Harbor of Los Angeles. The only one that I am familiar with was one operated by the United States Government but I have had nothing to do with any dredges operated by private individuals or corporations, nor have I had any occasion to inspect any such dredges, neither the hulls nor boilers. I have never been aboard one of them. The type of vessels we inspect are those flying the American flag and subject to the rules and regulations of the steam boat inspection service which are propelled in whole or in part by steam or motor. In my capacity as inspector of boilers, I do not inspect seagoing barges. That is entirely up to the inspector of hulls, not the steam inspector. I would define a seagoing barge the same way as it was defined by Samuel A. Kennedy, Jr., who preceded me on the stand.

Plaintiff introduced in evidence as its Exhibit No. 2 the following ordinance of the City of Los Angeles, and amendments thereto:

PLAINTIFF'S EXHIBIT NO. 2.

ORDINANCE NO. 33512

(New Series)

of the

CITY OF LOS ANGELES.

An Ordinance providing for the appointment of a Board of Mechanical Engineers, prescribing their powers and duties, and regulating the construction, operation and inspection of boilers and elevators and of gas and electric hoists and the operation of gas and gasoline road rollers and tractors.

The Mayor and Council of the City of Los Angeles do ordain as follows:

Sec. 5. Before being permitted to take an examination, each applicant for an engineer's license shall make and file with the secretary of the said board an affidavit, in writing, as to his previous experience, stating the number of years and in what capacity he has served about an engine or boiler, types of and horse-power of engines and boilers, where and by whom he was employed and the length of time he was employed by each person, firm or corporation. Such affidavit shall accompany the application for an engineer's license. Each such application, together with the affidavit accompanying the same, shall be presented to the said Board by the secretary at the first

regular meeting of the said Board after the same is filed, and no further action shall be taken thereon for a period of two weeks. During such period the secretary shall, if so directed by the said Board, verify the statements contained in such affidavit.

Sec. 8. The Board of Mechanical Engineers shall have power, by a four-fifths (4-5) vote, to revoke an engineer's license, or a renewal thereof, for violation of any provision of this ordinance or for inebriety, dishonesty or neglect of duty while in charge of an engine or boiler in use, or for absenting himself for more than ten consecutive minutes from the engine or boiler in his charge, while such engine or boiler is in operation, without leaving in charge of such engine or boiler an engineer holding an unexpired and unrevoked certificate of license issued as provided by this ordinance.

The said Board shall have power, by a majority vote, to suspend an engineer's license, or a renewal thereof, for a period of not exceeding thirty (30) days, for any of such causes.

No such license or renewal shall be revoked until a hearing shall have been had by the said Board in the matter of the revocation of such license or renewal, notice of which hearing shall be given in writing, and served at least three days prior to the date of hearing upon the holder of such license, which notice shall state the ground of complaint against the holder of such license and shall also state the time when and the place where such hearing will be had. Such notice shall be served upon the holder of such license by

delivering the same to such person, or by leaving such notice at the place of business or residence of such persons with some person of suitable age and discretion. If the holder of such license cannot be found and service of such notice cannot be made upon him in the manner hereinbefore provided, then a copy of such notice shall be mailed, postage fully prepaid, addressed to such holder of such license at such place of business or residence, at least three days prior to the date of such hearing.

Sec. 11. Every applicant for a license who fails to pass the examination of the Board of Mechanical Engineers, shall be required to wait for four weeks before making another application, and thereupon the said Board shall give such applicant another examination. Any applicant who fails to pass the examination upon the third trial shall not be permitted to make another application within the period of six months thereafter.

Sec. 12. (As amended by Ordinance No. 41463.) Every owner or user of any boiler or steam generating apparatus used for power or heating purposes, carrying over ten pounds of steam shall, when the same is in use, employ a competent engineer having an unexpired and unrevoked certificate of license from the Board of Mechanical Engineers, and it shall be unlawful for any such owner or user to employ or permit any person to operate or use the same, other than such an engineer having an unexpired or unrevoked certificate of license.

Sec. 13. (As amended by Ordinance No. 41463.) It shall be unlawful for any person to use or operate any steam boiler or steam generating apparatus of over five horsepower in the City of Los Angeles, unless such person has an unexpired and unrevoked certificate of license issued by the said Board as in this ordinance provided.

Sec. 22. It shall be unlawful for any person, firm or corporation to use or operate, or to cause or permit to be used or operated, any steam boiler or any steam generating apparatus, or any mangle or steam kettle or any cast iron heater, until the same shall have been inspected and tested and all inspection fees paid, and a certificate issued as in this ordinance provided, or unless the same is inspected and tested as often as is required by this ordinance.

Sec. 27. (As amended by Ordinance No. 38872.) It shall be unlawful for any person, firm or corporation to erect or use or to cause or permit to be erected or used, any boiler or other steam generating apparatus without first obtaining a permit therefor, in writing, from the Board of Fire Commissioners. After obtaining such permit, such person, firm or corporation shall obtain an additional permit from the Board of Mechanical Engineers for the erection, use and location of each boiler or other steam generating apparatus. Before such permit is obtained from said Board of Mechanical Engineers the person, firm or corporation applying for such permit shall file with the said Board a detailed statement, in writing, showing the size and construction of the boiler, or boilers,

sought to be erected, used or located. It shall be the duty of the Board of Mechanical Engineers to charge and collect for the granting of each such permit a fee of one (\$1) dollar.

Sec. 28. (As amended by Ordinance No. 38872.) Every boiler shall be inspected internally and externally and given the hydrostatic test before being enclosed with any brick or masonry. Every boiler carrying more than ten (10) pounds pressure of steam shall be hung upon side lugs or by means of buckles and hooks, suspended from steel I-beams or on steel rails of sufficient strength to sustain six times the combined weight of the boiler and water when such boiler is filled with water. No boiler carrying more than ten pounds pressure of steam shall be supported by a stand base at the back and bottom of the shell, but the same shall be hung by the side or suspended from the top as hereinbefore provided.

Sec. 29. (As amended by Ordinance No. 38872.) It shall be unlawful for any person, firm or corporation to connect any blowoff pipe from a steam boiler or steam generating apparatus directly with any sewer, or to cause or permit any such pipe so to be connected, or to use, or to cause or permit to be used, any such pipe when the same is so connected. Steam shall be blown into a sump tank and the water in such tank shall be pumped or siphoned into a sewer.

Every steam boiler shall have a check valve on the city water supply pipe between the boiler and the stop cock or feed valve.

Sec. 30. (As amended by Ordinance No. 38,872 (N. S.), approved April 17, 1919). Every boiler or steam generating apparatus operated in the City of Los Angeles shall be constructed and maintained in accordance with the provisions of this ordinance, and in accordance with the Boiler Safety Orders adopted by the Industrial Accident Commission of the State of California, effective January 1, 1917, or as said orders may from time to time be amended, altered or revised, and to the satisfaction of the Board of Mechanical Engineers.

Sec. 31. It shall be unlawful for any person, firm or corporation to permit any boiler or steam generating apparatus, or other apparatus mentioned in this ordinance, to be subjected to or to carry a greater pressure than is allowed and stated in the certificate of inspection thereof, or to use, or to cause or permit to be used, any such boiler or steam generating apparatus, or other apparatus, after the same shall have been condemned as unsafe by the Board of Mechanical Engineers and before the same shall have been reconstructed or repaired to the satisfaction of the said Board.

Sec. 43. That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than five (\$5) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the city jail for a period of not more than six (6) months, or by both fine and imprisonment.

Each such person, firm or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this ordinance is committed, continued or permitted by such person, firm or corporation, and shall be punishable therefor as provided by this ordinance.

Sec. 44. That Ordinance No. 28,972 (New Series), entitle, "An Ordinance providing for the appointment of a Board of Mechanical Engineers and of a Boiler and Elevator Inspector, and regulating the construction and operation of boilers and elevators and of gas and electric hoists and the operation of gas and gasoline road rollers and tractors," approved January 8, 1914, and all ordinances amendatory thereto or thereof, and all other ordinances in conflict with this ordinance, be and the same are hereby repealed.

Jess E. Stephens,

City Attorney,

and

Lucius P. Green,

Asst. City Attorney,

Solicitors for Defendants and Appellants.

APPROVAL OF STATEMENT OF THE
EVIDENCE.

The matter of the settlement of the foregoing statement coming before the court and no objections or amendments to said statement having been proposed, and it having been stipulated between the respective parties by written stipulation on file in this cause that

the foregoing statement of the evidence is complete, and waiving notice of the time and place of presentation of the same for approval, and it appearing to the court that the same is true and complete,

IT IS HEREBY approved as true, complete and properly prepared.

Dated this 20 day of March, 1926.

Wm P. James

Judge.

[Endorsed]: Filed Mar 20 1926 Chas. N. Williams, Clerk By L. J. Cordes, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED DREDGING COMPANY, a corporation, Plaintiff vs. THE CITY OF LOS ANGELES, a municipal corporation, GEORGE E. CRYER, Mayor of the City of Los Angeles, and ROBERT LEE HEATH, Chief of Police of the City of Los Angeles, Defendants. No. H-121-J. Eq.

OPINION.

Messrs. Overton, Lyman & Plumb; Attorneys for plaintiff.

Jess E. Stephens, Esq.; Attorney for Defendants.

Plaintiff is engaged in operating a dredge for the purpose of deepening navigable waters in the harbor of Los Angeles, under contract with the United States government. Defendant city, by its ordinance, has

created a board of Mechanical Engineers, which board is required to examine and license operators of steam boilers and steam-generating apparatus. By the ordinance, it is made a misdemeanor for any person to operate such boilers or apparatus without having been duly licensed by the Board of Mechanical Engineers. Employees of the plaintiff, engaged in operating a dredge in the harbor of San Pedro, were threatened with arrest because they had not been licensed by said city authorizing them to be so employed. The city admits that it will, unless restrained, cause the arrest of plaintiff's employees, and contends that in so doing it will act properly within the scope of the police power with which it is invested. Plaintiff, on the other hand, contends that the city has no right or power to regulate or supervise the employees of the plaintiff because; (1) Such employees are engaged in maritime work upon the navigable waters of the United States, and hence are seamen; (2) That the United States has acted to cover the field and provide for inspection of maritime craft such as dredges employed upon navigable waters.

It was shown by the evidence that the dredge as used by the plaintiff is built in barge form, heavily constructed to withstand weather and water in the open sea, and that it is suited to and has been towed from point to point along the Pacific Coast. On one occasion it was shown that the dredge had withstood a heavy storm in the Pacific when the tow-line had parted which connected it with a steamer or tug-boat.

Upon the barge body are mounted cabin structures and the principal man in charge is called a captain or master. The master who was in charge of the dredge in question had served in that capacity for several years. He appeared to be experienced both in the operation of the dredge and in the handling of it while under tow. The boilers and engine constitute the mechanical equipment, all of which are used solely for the purpose of operating the dredging shovels. The dredge possessed no means of self-propulsion.

The effort of the city was to show under the first head that a barge, in order to be the subject of maritime jurisdiction, must be engaged in commerce as a carrier either of freight or passengers. I do not believe that such a limited classification comports with maritime practice. Here we have a large floating barge entirely disconnected from the shore except during the time that it may discharge through a pipe the matter lifted by a shovel, engaged upon navigable waterways, deepening, widening and clearing them for water-borne traffic, and being moved from place to place as the needs of navigation require. It operates in the use we have described, in assistance to, and in aid of, navigation.

The Supreme Court of the United States, in *Ellis vs. U. S.*, 206 U. S. 246, denominated scows and floating dredges as vessels within the admiralty jurisdiction and held that the employees were "seamen". Judge Cochran, of the District Court of Kentucky, in *Barnes Co. vs. One Dredge Boat*, has collected many authorities to the same point. By practical reasons

this view is also supported. A dredge of the kind and character here involved, employed in its work of aiding navigation, enlarging and deepening harbors and waterways, is subject to continual change of location. Its work may place it within the corporate limits of one municipality one day and some other on the next, in endless rotation. It would be a substantial interference with its operation if the men employed to manage the mechanical equipment were called upon to meet different qualification requirements of the various local governments.

I conclude on the first question that the work of the steam dredge is maritime and that the structure is a sea-going barge.

As to the second contention, it may be admitted that reasonable police regulations may be imposed upon maritime craft where considerations of safety are present in the locality under the jurisdiction of a municipality. Such regulations must be reasonable ones and may be enforced provided that the United States government has not already taken possession of the field in which it has primary jurisdiction. The law applicable was well stated by Judge Brown in *The City of Norwalk*, 55 Fed. 98, where he said that the rule in favor of federal jurisdiction did not "exclude general legislation by the states, applicable alike on land and water, in the exercise of the police power for the preservation of life and health, though incidentally affecting maritime affairs; provided that such legislation does not contravene any acts of Congress,

nor work any prejudice to the characteristic features of the maritime law, nor interfere with its proper harmony and uniformity in its international and state relations." The Shipping Act of 1908, Sec. 10 (35 Stat. at L. Vol. 1, page 428), provides for the inspection of the hull and equipment of seagoing barges. In my opinion that law fully authorizes the inspection of dredger barges and their equipment, which latter consists largely of the boiler and engines. There was evidence offered to show that it is not the practice of the department charged with the duty to make inspection of vessels, to inspect barges unless they are used directly in the work of transporting passengers or freight. But if the statute has, as I have concluded, brought dredges of the kind involved in this suit within the federal inspection field, then it matters not whether the officers charged with inspection duty in practice include or exclude such a barge from inspection.

It follows that decree should be in favor of the plaintiff, due exception of defendants to the entry thereof will be allowed.

Dated this 12 day of January, 1926.

Wm. P. James,

District Judge.

[Endorsed]: Filed Jan 12 1926 Chas. N. Williams, Clerk By Murray E. Wire, Deputy Clerk.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now come the defendants in the above entitled cause and file the following Assignment of Errors upon which they will rely upon their prosecution of the appeal in the above entitled cause, from the decree made by this Honorable Court on the 12th day of January, 1926, and entered on the 19th day of January, 1926.

I.

That the United States District Court for the Southern District of California erred in rendering its decree in favor of the plaintiff, enjoining the defendants from enforcing the provisions of Ordinance No. 33,512 (New Series) and amendments thereto as to the steam dredges operated by the plaintiff in the navigable waters within the city limits of the City of Los Angeles, and the errors complained of by these defendants are as follows:

1. It was error to hold that the dredges operated by the plaintiff in the waters of Los Angeles harbor are seagoing barges, within the contemplation of the Shipping Act of 1908, Sec. 10 (35 Stats. at L. Vol. 1, page 6428) providing for inspection of seagoing barges, or of any other act of the United States.

2. It was error to hold that the Shipping Act of 1908, Section 10 (35 Stats. at L. Vol. 1, page 428) providing for inspection of seagoing barges, authorizes or even contemplates the inspection of steam dredges.

3. It was error to hold that Congress had legislated upon the subject of inspection of dredges and their equipment by the enactment of said Section 10 of the said Shipping Act of 1908, and thereby excluded legislation upon the subject by the City of Los Angeles.

4. It was error to hold that said Sections 4438 and 4441, Chapter 1, Title III, Revised Stats. of U. S., providing for examination and licensing of engineers of steam vessels, apply to or even contemplate employees on steam dredges.

5. It was error to hold that dredges are steam vessels within the contemplation of said Sections 4438 and 4441, Chapter 1, Title III, Revised Stats. of U. S.

6. It was error to hold that Congress had legislated upon the subject of licensing dredger employees, by the enactment of said Sections 4438 and 4441, Chapter 1, Title III, Revised Stats. of U. S., to the exclusion of legislation upon the subject by the City of Los Angeles in the lawful exercise of its police power.

WHEREFORE, appellants pray that said decree be reversed and that said injunction be dissolved and that said District Court for the Southern District of California be ordered to enter a decree reversing its decision and dissolving said injunction in said cause.

Jess E. Stephens,
CITY ATTORNEY,

and

Lucius P. Green

ASSISTANT CITY
ATTORNEY

Attorneys for defendants

[Endorsed]: Filed Feb 5 1926 Chas. N. Williams,
Clerk, By R S Zimmerman Deputy Clerk.

[Title of Court and Cause.]

PETITION FOR APPEAL
TO THE HONORABLE WILLIAM P. JAMES,
JUDGE OF THE UNITED STATES DIS-
TRICT COURT:

The above named defendants, feeling aggrieved by the decree rendered in the above entitled cause on the 12th day of January, 1926, and entered on the 19th day of January, 1926, hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and they pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting in the City and County of San Francisco, State of California, under the rules of such court in such cases made and provided.

And your Petitioners further pray that a proper order relating to the security for costs to be required of it be made.

Jess E Stephens,

City Attorney

Lucius P. Green

Assistant City Attorney

Solicitors for Defendants.

Appeal allowed upon giving bond as required by law for the sum of \$250.00.

Wm P James

Judge of said United States District Court.

[Endorsed]: Filed Feb 5 1926 Chas. N. Williams,
Clerk By R S Zimmerman Deputy Clerk

[Title of Court and Cause.]

STIPULATION FOR COSTS ON APPEAL.

THE CITY OF LOS ANGELES, a Municipal Corporation, GEORGE E. CRYER, Mayor of the City of Los Angeles, and ROBERT LEE HEATH, Chief of Police of the City of Los Angeles, having filed, or being about to file a petition for appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, from the judgment filed and entered in this matter in this Court, on the 19th day of February, 1926.

NOW THEREFORE, the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, authorized to do a general surety business, as Surety, hereby undertakes in the sum of Two Hundred Fifty and 00/100 (\$250.00) Dollars, and promises on the part of the said Defendants, that they will pay all costs and damages which may be awarded against them on the said appeal, or on the dismissal thereof; and the undersigned Surety further consents that in case of default or contumacy on the part of the said Defendants, execution to the

Examined and recommended for approval as provided in Rule #29.

Jess E. Stephens

Attorney

I hereby approve the foregoing bond

Dated the 4th day of Feb. 1926.

Wm. P. James

Judge.

[Endorsed]: Filed Feb 5 1926 Chas. N. Williams,
Clerk By R S Zimmerman Deputy Clerk.

[Title of Court and Cause.]

PRAECIPE.

TO THE CLERK OF SAID COURT:

Sir:

An appeal in the above entitled action and also in the action entitled Fred C. Franks, et al., vs. The City of Los Angeles, et al., No. H-120-J, having been allowed, and bond therein having been filed and approved, you are requested to issue transcript of record on appeal of defendants and appellants, The City of Los Angeles, a municipal corporation, George E. Cryer, Mayor of The City of Los Angeles, and Robert Lee Heath, Chief of Police of The City of Los Angeles, in the above entitled case, containing copies of the following papers herein, viz:

1. The amended bill filed by plaintiff herein.
2. The answer to the amended complaint filed by defendants herein.

3. Order on stipulation that evidence offered in the above entitled action shall apply also to the case of Fred C. Franks, et al., vs. The City of Los Angeles, et al., No. H-120-J.

4. Statement of the evidence with approval thereof.

5. Opinion of the court directing decree in favor of the plaintiff.

6. The decree of court perpetually enjoining and restraining defendants from enforcing that certain Ordinance of The City of Los Angeles, No. 33512, and amendments thereto, filed herein and entered January 19, 1926.

7. The petition for appeal filed herein by the appellants.

8. The assignment of errors filed herein by the appellants.

9. Order allowing the appeal and fixing bond attached to said petition for appeal.

10. The bond on appeal.

11. Praecipe.

12. The original citation as required by Rule 14 of the United States Circuit Court of Appeal for the Ninth Circuit.

12½. Order enlarging time for docketing record on appeal.

13. Stipulation for consolidation on appeal of above entitled action with action entitled Fred C. Franks, et al., vs. City of Los Angeles, et al., No. H-120-J.

NOTE TO THE CLERK:

Your attention is directed to the Stipulation on file herein, for the consolidation on appeal of the above entitled action with the action entitled Fred C. Franks, et al., vs. The City of Los Angeles, et al., No. H-120-J, and you are requested, in accordance therewith, to entitle the transcript of the record in both actions; also, as per Equity Rule No. 76, you are requested to omit from all documents in which the title of court and cause appear, with the exception of the amended bill of complaint, the formal captions and to state simply "Title of Court and Cause," and eliminating all endorsements with the exception of the filing marks.

Jess E. Stephens
City Attorney
and
Lucius P. Green,
Asst. City Attorney,
Solicitors for Defendants and Appellants.

It is hereby stipulated by the Solicitors for the respective parties to the above entitled action that the foregoing Praecipe is the only one to be considered in this cause and made a part of the record and transcript.

Jess E. Stephens,
City Attorney,
and
Lucius P. Green
Asst. City Attorney,
Solicitors for Defendants and Appellants.
Overton, Lyman & Plumb
L. K. Vermille
Solicitors for Plaintiff and Appellee.

[Endorsed]: Filed Mar. 20 1926 Chas. N. Williams Clerk by L. J. Cordes, deputy clerk

[Title of Court and Cause.]

CLERK'S CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 49 pages, numbered from 1 to 49 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, amended complaint, answer to amended complaint, final decree, stipulation of consolidation, statement of evidence, opinion, assignment of errors, petition for appeal and order allowing same, and fixing bond, stipulation for costs on appeal, and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this.....day of April, in the year of Our Lord One Thousand Nine Hundred and Twenty-six, and of our Independence the One Hundred and Fiftieth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.